

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Jack Simpson, Jr.,)	Civil Action Number 3:22-808-SAL-PJG
)	
Plaintiff)	
)	OPINION AND ORDER
vs.)	
)	
R.J. Reynolds Tobacco Company, Inc.;)	
Brown & Williamson Tobacco Corporation;)	
Lorillard Tobacco Company; Phillip Morris)	
USA, Inc.,)	
)	
Defendants.)	

This matter is before the court for review of the December 13, 2022, Report and Recommendation (Report) of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). [ECF No. 87.] In the Report, the Magistrate Judge recommends this court grant Defendants’ motion to dismiss, ECF No. 36, in part as to Plaintiff’s failure to warn and wire fraud claims, but deny the motion as to Plaintiff’s remaining claims of intentional fraud, intentional and/or fraudulent misrepresentation, intentional fraudulent inducement, and civil conspiracy to commit fraud and concealment. [ECF No. 87 at 6]. Additionally, the Magistrate Judge recommends this court dismiss Defendant Phillip Morris USA, Inc., pursuant to Federal Rule of Civil Procedure 4(m). *Id.* Attached to the Report was a Notice of Right to File Objections, which informed the parties “[s]pecific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation.” *Id.* at 7. Objections were due December 28, 2022. As of the date of this Order, an additional 35 days have passed since the deadline for filing objections. No party filed objections to the Report, and the time to do so has lapsed.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. See *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a *de novo* determination of only those portions of the Report that have been specifically objected to, and the court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After a thorough review of the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error, adopts the report, ECF No. 87, and incorporates the Report by reference herein. Accordingly, Defendants’ motion to dismiss is **GRANTED IN PART** as to Plaintiff’s failure to warn and wire fraud claims but **DENIED** as to Plaintiff’s claims for intentional fraud, intentional and/or fraudulent misrepresentation, intentional fraudulent inducement, and civil conspiracy to commit fraud and concealment. Additionally, Defendant Phillip Morris USA, Inc., is **DISMISSED** pursuant to Federal Rule of Civil Procedure 4(m).

IT IS SO ORDERED.

February 13, 2023
Columbia, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge